

H978ATIC

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

15 Cr. 867 (RMB)

MEHMET HAKAN ATILLA,

Defendant.

September 7, 2017  
11:15 a.m.

Before:

HON. RICHARD M. BERMAN

District Judge

APPEARANCES

JOON H. KIM

Acting United States Attorney for the  
Southern District of New York

BY: SIDHARDHA KAMARAJU

DAVID W. DENTON

MICHAEL D. LOCKARD

DEAN C. SOVOLOS

Assistant United States Attorneys

FLEMING RUVOLDT PLLC

Attorneys for Defendant

BY: CATHY A. FLEMING

-and-

HERRICK, FEINSTEIN LLP

BY: THOMAS E. THORNHILL

DAVID M. ROSENFELD

Also present: JENNIFER McREYNOLDS, FBI

MICHAEL CHANG-FRIEDEN, Paralegal

ASIYE KAY, Turkish Language Interpreter

SEYHAN SIRTALAN, Turkish Language Interpreter

H978ATIC

(Case called)

THE COURT: So let's note for the record that we have a Turkish language interpreter and ask Mr. Atilla if he is able to understand these proceedings with the help of the interpreter.

THE DEFENDANT: Yes, your Honor.

THE COURT: Just by way of background, the purpose of today's conference was, up until a very short time ago, for the Court to, as you were aware, issue a ruling on the defense motion to dismiss the indictment. In connection with that, I got a request from defense counsel for Mr. Zarrah that he be excused from that proceeding, which I granted, no need for him to be at that proceeding. As you know, yesterday evening a superseding indictment was filed by the government, and which seems to me obviates the need for a ruling on the defense motion. It renders that, I think, at least moot for the moment, and we have to go in a new direction.

So we need, first of all, to have an arraignment with respect to the superseding indictment.

As I read it and have read it, the plot, as it were, alleged by the government has thickened if measured by these metrics. For one, there are added defendants. For two, there are added Counts Five and Six, Five being a money laundering count, and Six being an attempted money laundering count -- conspiracy to commit money laundering, that's Six, and Five is

H978ATIC

1 money laundering itself.

2           There also appear to be some stronger rhetorical  
3 allegations, including those on page 2, among others, where in  
4 paragraph 2 there is an allegation that high-ranking government  
5 officials in Iran and Turkey participated in and protected this  
6 scheme. Some officials -- I am reading from the superseding  
7 indictment -- some officials received bribes worth tens of  
8 millions of dollars paid from the proceeds of the scheme so  
9 that they would promote the scheme, protect the participants,  
10 and help to shield the scheme from the scrutiny of US  
11 regulators. I don't think that was in the old indictment which  
12 is superseded.

13           It also is relevant here, and I don't mean to be  
14 exhaustive, but these stood out to me: The alleged role of  
15 Halkbank, which is a majority state-owned bank in Turkey, seems  
16 to have become considerably more prominent, at least in terms  
17 of the allegations included in this superseding indictment.

18           So I am going to ask the government to explain what is  
19 going on here in the superseding indictment in a moment, but we  
20 do need to have an arraignment of Mr. Atilla with respect to  
21 the superseding indictment, and with your help, I would ask at  
22 this time if he is ready to be arraigned with respect to the  
23 superseding indictment.

24           MS. FLEMING: He is, your Honor. I am Cathy Fleming.  
25 We have received a copy of the superseding indictment. We

H978ATIC

1 acknowledge it, we waive a reading of it in open court, and we  
2 ask that a plea of not guilty be entered on all of the counts.

3 Your Honor, I would just note Mr. Atilla was only  
4 named in two of the counts of the original indictment. He has  
5 been added to the additional counts in this one as well.

6 THE COURT: So he is now charged in four counts.

7 MS. FLEMING: I think he is now charged in six counts,  
8 and he is pleading not guilty to all of those counts.

9 THE COURT: Got it.

10 I am sure you do agree with me that the old motion to  
11 dismiss is rendered moot by this new superseding indictment.

12 MS. FLEMING: I believe with that question, yes, your  
13 Honor. I do think we have some thoughts with regard to the  
14 timing of the superseding indictment and the consequences that  
15 flow from it, but I will wait until your Honor wants to hear  
16 it.

17 THE COURT: So let me hear from the government first  
18 and talk about what is going on here, and then I am happy to  
19 hear from the defense as well.

20 MR. DENTON: Your Honor, there are two principal  
21 changes in the superseding indictment. The first is that the  
22 indictment describes in much greater detail the overarching --  
23 to use your Honor's word -- plot to provide financial  
24 services --

25 THE COURT: I said alleged plot.

H978ATIC

1 MR. DENTON: Alleged plot.

2 THE COURT: And it's alleged by you.

3 MR. DENTON: And by the grand jury.

4 THE COURT: And by the grand jury.

5 MR. DENTON: To provide the government of Iran access  
6 to the proceeds of Iranian oil and gas sales held at banks  
7 around the world, but particularly at Turkish Bank 1. The  
8 indictment describes the way in which that was done, the role  
9 that various individuals played in it, and places that alleged  
10 plot in the context of the U.S. regulations applicable to  
11 financial transactions with Iran and Iranian entities during  
12 the time period. Those changes are particularly relevant  
13 because part of the scheme, as alleged in the indictment, was  
14 to avoid changing regulations by changing the deceptive methods  
15 used by the members of the conspiracies.

16 In the context of providing that added detail, it  
17 identifies a number of other co-conspirators. Several  
18 individuals who were previously identified only as unindicted  
19 co-conspirators are now charged in the indictment, along with  
20 one other individual who was not previously named. So there is  
21 added clarity on who those --

22 THE COURT: That person, is that Mehmet Zafer  
23 Caglayan?

24 MR. DENTON: Yes, your Honor.

25 THE COURT: The former economic minister of Turkey?

H978ATIC

1 MR. DENTON: That's correct, your Honor.

2 So the indictment identifies with specificity who  
3 those individuals were.

4 I should note that the description of the overarching  
5 alleged scheme here is not a new scheme. This is the same  
6 operative set of conduct that has been alleged since the very  
7 beginning in this case. The government is simply providing a  
8 more fulsome description of it and of its participants.

9 THE COURT: So you said there were two principal  
10 changes. Are those the two?

11 MR. DENTON: That deals with the additional factual  
12 information alleged in the indictment.

13 The second change deals with the charges in this case.  
14 All of the defendants are now charged in all six counts of the  
15 indictment.

16 The first count, which was included in the previous  
17 superseding indictments, alleges a scheme to defraud the United  
18 States by obstructing the functions of the U.S. Treasury  
19 Department in administering the regulations on transactions  
20 with Iran. The defendant here, Mr. Atilla, had not previously  
21 been charged in that count. He now, like all of the other  
22 defendants, is.

23 The second count, IEEPA, is the same statutory  
24 violation.

25 Count Three, which was previously a conspiracy to

H978ATIC

1 commit bank fraud count, is now a substantive bank fraud count.

2 Count Four is the conspiracy to commit bank fraud.

3 Similarly, what had previously been Count Four, which  
4 was a conspiracy to commit money laundering, is now Count Six,  
5 and Count Five is a substantive money laundering count.

6 As I am sure your Honor is aware, those are sort of  
7 the additions that we typically make prior to trial in  
8 anticipation of various defense theories.

9 So those are the two principal areas of changes in the  
10 superseding indictment.

11 THE COURT: Am I correct, I just read it fairly  
12 recently and somewhat superficially, but I did notice in this  
13 indictment, which I thought was differently detailed as I had  
14 seen before, that you now allege a series of meetings between  
15 U.S. Treasury officials and Turkish banking authorities that  
16 were or were not -- I think they were not alleged in the prior  
17 indictment.

18 MR. DENTON: That's correct, your Honor. The new  
19 indictment does allege that senior Iranian government officials  
20 met with senior Turkish, both government and bank officials,  
21 including this defendant, in furtherance of the scheme.

22 THE COURT: And met with U.S. officials.

23 MR. DENTON: Yes, your Honor.

24 I should be clear, the allegation is that Turkish  
25 officials met with U.S. officials, not that Iranian ones did.

H978ATIC

1 THE COURT: OK.

2 I am happy to hear from the defense.

3 MS. FLEMING: Your Honor, it's a little disheartening  
4 at this stage of the proceedings to get a superseding  
5 indictment that the government says merely fleshing out what  
6 their earlier charges are. We have spent a lot of time trying  
7 to figure out an earlier indictment. We made a bail  
8 application two weeks ago, and the government was silent on the  
9 fact that there was going to be a superseding indictment. I  
10 think the government knows that we were over in Turkey. This  
11 is not a case that is easily defended the way some are in the  
12 United States, where you're able to have access to witnesses  
13 and facts in the United States. These events took place in  
14 Turkey, and we go to Turkey in order to speak with witnesses  
15 and obtain facts and flesh things out in order to prepare for a  
16 defense. And we have also had the challenges that we have  
17 probably ad nauseam hit the Court with, in terms of trying to  
18 prepare this case, because Mr. Atilla has been extremely  
19 anxious to get to trial and clear his name.

20 So it is incredibly disheartening to get this seven  
21 weeks before the firm trial date, particularly when your Honor  
22 was ruling on bail with that in mind and now having the speedy  
23 trial clock start again today. There are new defendants added.  
24 I don't think the United States truly believes they are going  
25 to be able to get any of these additional defendants here in



H978ATIC

1 the United States. They have been added for color or effect, I  
2 guess, in the indictment naming Mr. Atilla.

3 I know that the Court is going to set a new schedule.  
4 We are going to have motions addressed to this indictment, I  
5 would assume. We only got it last night. We did get a  
6 heads-up from the government the day before that it was coming.  
7 I would suggest that it would probably benefit all of us if we  
8 could have a conference with the Court on some of the unique  
9 issues that we are facing. For example, one that really jumps  
10 out at me is that this is a case that so richly cries for us to  
11 get early *Jencks*, because we are not going to be in a position  
12 when we get it in the normal course to run to Turkey to try to  
13 track down the ability to counter whatever we see in *Jencks*  
14 materials. And we can do it with a protective order or  
15 whatever we need to do. But there are just extremely unusual  
16 evidentiary hurdles that we are facing, and we do represent a  
17 gentleman who maintains vigorously his innocence and looks  
18 forward to proving it. So that is one issue.

19 We have alluded in the past to the problems of the  
20 fact that this arises from an investigation in Turkey,  
21 including wiretapping that has been discredited or found to be  
22 illegal in Turkey from 2013, and indeed, the --

23 THE COURT: I don't mean to interrupt. Just for a  
24 point of clarification. I was going to ask the government too.  
25 My observation from a quick read of the new indictment was that

H978ATIC

1 there is a bit of an expansion in the time period from the old  
2 indictment to this one, or am I misreading it? The more  
3 activities in the superseding indictment up to and including  
4 2015, were they the same as were in the old indictment?

5 MR. DENTON: Your Honor, I believe those were the same  
6 that were in the previous indictment.

7 THE COURT: OK. Sorry.

8 MS. FLEMING: In any event, I think that -- I'm sorry,  
9 Judge, I think I have just lost my train of thought.

10 THE COURT: I apologize.

11 MS. FLEMING: I am on the wrong side of 60, Judge. It  
12 happens more and more, when it happens.

13 THE COURT: Which is the right side?

14 MS. FLEMING: I guess that's true.

15 I think in addition to early *Jencks* material, I think  
16 that an early witness list is important. We are going to have  
17 issues that are going to be fairly unique, your Honor, in a  
18 criminal case.

19 So, for example, there are going to be issues relating  
20 to the authentication and the admissibility of recordings of  
21 foreign evidence, I am confident. We are going to have issues  
22 of foreign witnesses. This isn't a case where a Rule 15  
23 deposition really works, because we don't know what the  
24 evidence is going to be as the government adduces it unless we  
25 have the early *Jencks*, etc., and we know what their case is.

H978ATIC

1 So we probably are going to be suggesting to the Court a  
2 procedure where at the end of the case, unless it's Rule 29,  
3 hope springs eternal, that if we do have to go forward on a  
4 defense case, that we break for a day and do some kind of live  
5 feed from Turkey to have witnesses that come in from Turkey.

6 So there are going to be unique and difficult  
7 evidentiary issues. The first thing that struck us last night,  
8 as we looked at this, is that we now need to go back to Turkey  
9 almost immediately and follow-up and do some more factual  
10 investigation now that more has been fleshed out.

11 So what I am saying, Judge, we have been working  
12 unbelievably hard to move forward.

13 THE COURT: I am sure.

14 MS. FLEMING: I really don't want to be standing up  
15 here again in a couple of months saying the same thing. I  
16 really think that this is a case that calls for unusual  
17 measures of getting the evidence early. Subject to a  
18 protective order is fine. We have been living with a  
19 protective order in the case. We have been observing it and  
20 been complying with it. But it really is a case that we just  
21 can't run to Turkey every time we find out a new fact. It  
22 really has to be done in a logical and appropriate course. And  
23 I do think that's fair.

24 THE COURT: So let me make a suggestion to you.

25 By the way, I meant to say before, when I excused

H978ATIC

1 Mr. Zarrab, he will now have to come back and be arraigned as  
2 well, and that has been scheduled for Monday, September 11,  
3 this Monday at noon.

4 I am going to suggest this, counsel. I think, and  
5 maybe you already have, you should absorb, of course, the  
6 implications of the superseding indictment with your colleagues  
7 and with Mr. Atilla. You should meet and confer with the  
8 government and see if you can make a proposal -- are there  
9 going to be more motions, is there going to be a new motion to  
10 dismiss -- on what kind of feasible time frame.

11 I also suggest that you meet and confer with  
12 Mr. Brafman, who coincidentally was just here on another case,  
13 and I seem to recall saying to him, Well, I will see you soon,  
14 and his answer was, Well, I will be writing you a letter about  
15 that. So I don't know if the implication was that he is going  
16 to seek to change the trial date. I don't know if you want to  
17 do that also. But there is a question of whether it's  
18 feasible, in light of the new indictment, to have the trial on  
19 the schedule that we currently are on. So I think you should  
20 all meet and confer and figure that out, and then we should get  
21 together again, or you can write me a letter to see where  
22 things stand.

23 MS. FLEMING: We will do that, your Honor. We  
24 currently have a schedule of jury instructions due on September  
25 15th and a schedule of motions in limine. I actually think it

H978ATIC

1 might be a bit premature, given the additional charges, to be  
2 doing that. We were hoping to work with the government.

3 THE COURT: I think you're right. The first question  
4 I am going to ask, and you don't have to answer it now, is what  
5 about the motion to dismiss? Do you have a plan? And you may  
6 not have one yet. The one that's before me, probably some of  
7 it could be salvaged, but it would have to be tailored, I  
8 imagine, considerably.

9 MS. FLEMING: That's correct. I suspect the portion  
10 where we argue that he is not named enough in overt counts and  
11 his name is not mentioned is probably moot at this point. But  
12 I believe that our arguments with regard to perhaps  
13 extraterritorial jurisdiction, events in Turkey, whether there  
14 were dollar transactions and the like, I suspect those are  
15 still indeed correct, but we have to look at it, your Honor.  
16 We really haven't had time to digest it and talk about it.

17 THE COURT: So you tell me, what would be a realistic  
18 date, either for a court date or an update, where you would  
19 have a new plan or approach?

20 MS. FLEMING: Your Honor, would two weeks work for the  
21 Court?

22 THE COURT: Yes.

23 MS. FLEMING: I am actually out of town until  
24 September 20th. So could we do perhaps the 21st?

25 THE COURT: Let me take a look.

H978ATIC

1 MS. FLEMING: That's Rosh Hashanah. I'm sorry.

2 THE COURT: How about Monday the 25th?

3 MS. FLEMING: That would be acceptable. Of course,  
4 your Honor.

5 THE COURT: At noon?

6 MS. FLEMING: That works.

7 THE COURT: Does that work for the government as well?

8 MR. DENTON: Your Honor, that's fine with the  
9 government.

10 THE COURT: If you have something in writing before, I  
11 am not requiring it, but if you all get together and come up  
12 with a new arrangement, it would be helpful to get that before  
13 September 25.

14 I think I had made the comment or the observation --  
15 this is for the government -- do I understand the superseding  
16 indictment in fact to allege a more prominent role for  
17 Halkbank, or some of the Halkbank officials, than the old  
18 indictment?

19 MR. DENTON: There are a number of other officials of  
20 Turkish Bank 1 who were not previously identified, but who were  
21 identified as unindicted co-conspirators. So to the extent  
22 that those individuals are now charged, I guess you can  
23 characterize it as a more substantial role.

24 THE COURT: What about the allegations as to the  
25 bank's alleged participation, is that the same? It seemed to

H978ATIC

1 me that there were some changes there as well.

2 MR. DENTON: There is certainly a larger volume of  
3 description of the role played by Turkish Bank 1 and its  
4 various officials in the scheme in the new indictment. That's  
5 correct, your Honor.

6 THE COURT: I think that's it, unless anybody has  
7 anything they want to add.

8 MR. DENTON: If I may just clarify, your Honor. We  
9 were talking a moment ago about the September 15 deadline for  
10 motions in limine and requests to charge. I assume, in light  
11 of the Court's proposal that we come back, that we include a  
12 new schedule for all of those things in the proposal as well?

13 THE COURT: Yes. And you should also all include  
14 Mr. Brafman in the conversation as well so we don't get it in  
15 bits and pieces.

16 MR. DENTON: Of course, your Honor.

17 THE COURT: Those dates are clearly not realistic at  
18 this stage, and we will have to come up with a new arrangement.

19 We have excluded time, have we not, probably until the  
20 trial date?

21 MR. DENTON: That's correct, your Honor.

22 THE COURT: So we don't have be concerned about the  
23 speedy trial clock at this time?

24 MR. DENTON: Your Honor, I think, because it's a new  
25 indictment, we may need to exclude time again. It may make

H978ATIC

1 sense just to do it until what is currently the trial date of  
2 October 30th.

3 Is that all right with you? You don't have to agree.

4 MS. FLEMING: I cannot consent to that, your Honor. I  
5 do not consent.

6 THE COURT: Fair enough. I am going to find, however,  
7 that under 18, United States Code, Section 3161, the request  
8 for adjournment -- both sides have sought some adjournment, not  
9 necessarily of the trial date, both the government and the  
10 defense -- is appropriate and warrants exclusion of the  
11 adjourned time from speedy trial calculations. I think we  
12 should exclude to the next court date for this purpose and take  
13 it up again on September 25, 2017. And I find that the  
14 exclusion is designed to prevent any possible miscarriage of  
15 justice, to facilitate these proceedings, and to guarantee  
16 effective representation of and preparation by counsel for all  
17 the parties, and thus, the need for exclusion and the ends of  
18 justice outweigh the interest of the public and the defendants  
19 in a speedy trial, pursuant to 18 U.S.C., Section 3161(h)(7)(A)  
20 and (B).

21 So that takes us to September 25. I will see you all  
22 then. Thanks very much.

23 MS. FLEMING: Thank you, your Honor.

24 MR. DENTON: Thank you, your Honor.

25 (Adjourned)